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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,742	09/22/2005	Clare Hill	112701-658	6069
29157	7590	06/10/2009	EXAMINER	
K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690			BEKKER, KELLY JO	
			ART UNIT	PAPER NUMBER
			1794	
			NOTIFICATION DATE	DELIVERY MODE
			06/10/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

### Office Action Summary

**Application No.**

10/550,742

**Applicant(s)**

HILL ET AL.

**Examiner**

Kelly Bekker

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 3-16 and 18-34 is/are pending in the application.
- 4a) Of the above claim(s) 32-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-16, 18-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

Amendments made 3/27/09 have been entered.  
Claims 1, 3-16 and 18-34 remain pending.  
Claims 32-34 were withdrawn.

***Claim Rejections - 35 USC § 112***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The 112 rejections of claims 17, 18, and 24 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention have been withdrawn in light of applicant's amendments made March 27, 2009.

***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-16 and 18-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (WO 02/30213 A1) in view of the combination of Gennadios (US 6214376 B1) and Lennox (Gelatin Alternatives in Gummi Confections). The references and rejection are incorporated herein and as cited in the office action mailed February 4, 2009.

Specifically regarding the amendments to claim 1, the newly added limitations are substantially the same as the limitations previously recited in claim 2 and thus are rejected for the same reasons of record that claim 2 was previously rejection.

Specifically regarding the amendments to claim 24, Jones teaches that the viscosity of the liquid center is from 0.0089-159Pas at 25C (page 3 lines 19-21); Jones is silent to the viscosity of the liquid center at 60-100C. Since Jones teaches of a liquid center with substantially the same composition, including 10-50% water and 50-90% sugars as the instantly claimed composition, one of ordinary skill in the art at the time the invention was made would expect that the composition as taught by Jones possesses

the same properties, including viscosity at 60-100C as the instantly claimed composition.

### ***Response to Arguments***

Applicant's arguments filed March 27, 2009 have been fully considered but they are not persuasive.

Applicant argues that the references of record do not teach of the newly added limitations, specifically 1.5-5% by dry weight of kappa and iota carrageenan in the shell of the food product. Applicant's argument is not convincing as Jones teaches that the shell comprises 0.5-5% hydrocolloid, including carrageenan when the shell thickness is 2-10mm (page 2 lines 15-17 and page 2 line 31 through page 3 line 1) and the shell comprises 3-50% (page 3 lines 1-10). Thus, Jones teaches that the hydrocolloids, including the carrageenan are included in the shell at 0.5% (0.5/97)-10% (5/50) by dry weight basis. Regarding the type of carrageenan used in the shell and ratio of kappa to iota carrageen in the shell, it would have been obvious to use iota and kappa carrageen as the carrageen in the shell taught by Jones since, as admitted by applicant, specification page 1 line 32, only kappa and iota carrageenan have gelling properties.

Applicant argues that Gennadios teaches away from the present invention by teaching a higher range of carrageenan in the gelling composition. Applicant's argument is not convincing as the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Jones teaches that the hydrocolloids, including the carrageenan are included in the shell at 0.5-10% by dry weight basis. Jones, however, does not teach the ratios of carrageenan types in the shell. Gennadios teaches of a capsule with carrageenan similar to that of Jones. Gennadios teaches that when using carrageenan in shells 25% or 50% kappa carrageenan may be substituted by iota carrageenan in order to form a softer more elastic gel. Gennadios is not relied upon for

a teaching of a total amount of carrageenan to use a shell, but rather direction in the ratio of types of carrageenan to use since the primary reference is silent.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Bekker whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jennifer McNeil can be reached on (571) 272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lien Tran/

/Kelly Bekker/

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Primary Examiner

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Examiner

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